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**IN THE
COURT OF APPEALS OF INDIANA**

BRADLEY J. HARRIS,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 89A01-0602-CR-82
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE WAYNE CIRCUIT COURT
The Honorable Gregory A. Horn, Special Judge
Cause No. 89C01-0301-FC-001

OCTOBER 10, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

HOFFMAN, Senior Judge

STATEMENT OF THE CASE

Appellant-Defendant Bradley J. Harris appeals his convictions for four counts of child molesting as class A felonies and the trial court's denial of his motion for a new trial. We affirm.

ISSUES

Harris raises one issue, which we restate as whether the trial court abused its discretion by denying his motion for a new trial based upon juror misconduct.

FACTS AND PROCEDURAL HISTORY

The State ultimately charged Harris with ten counts of child molesting, Counts I through III as class C felonies and Counts IV through X as class A felonies.¹ Following a motion by Harris, the trial court severed Counts I through III. Following a jury trial on Counts IV through X, the jury found Harris guilty of Counts V, VII, VIII, and IX and not guilty of Counts IV, VI, and X. Prior to sentencing, Harris filed a motion for a new trial, alleging juror misconduct. Specifically, Harris alleged that he “believe[d]” that “juror #11 slept through parts of the trial” and that “juror #5 knew the Defendant, several witnesses, and that she knew things about that case, all of which she did not disclose in jury selection.” Appellant's App. at 146.

The trial court held a hearing on Harris's motion, and Harris subpoenaed Juror #5 and Juror #11 to testify at the hearing. During the hearing, Juror #5 testified that she did not know Harris or anything about the case prior to trial. Juror #11 testified that she did

¹ The State amended its charging information three times.

not sleep during the trial and that she listened to all the evidence. During Juror #11's testimony, Harris asked her, "[A]re you comfortable with the verdict that you reached?" Tr. at 928. The State objected based on the grounds that the question raised an allegation not raised in Harris's new trial motion and that it invaded the province of the jury, and the trial court sustained the objection based on the objection that the allegation was not raised in Harris's motion. Harris's counsel then made the following offer of proof:

Your Honor, I believe if [Juror #11] were allowed to testify she would testify that during the deliberation process which went on for a number of hours that she felt, uhm, coerced and pressured by her fellow jurors to reach the verdict that she did, that she's not comfortable with it, doesn't like it, and in fact doesn't think that a guilty verdict should be entered or should have been entered or found. She also indicated to me, and I believe she would testify that she was threatened by her fellow jurors into not only reaching this verdict but when the jury was being polled she was advised that she needed to say that this in fact was her verdict.

Tr. at 930. The trial court denied Harris's motion for a new trial and sentenced him to an aggregate term of thirty years in the Indiana Department of Correction. Harris now appeals.

DISCUSSION AND DECISION

The sole issue is whether the trial court abused its discretion by denying Harris's motion for a new trial based upon juror misconduct. A defendant who seeks a new trial based upon jury misconduct must demonstrate that the misconduct was gross and that it probably harmed the defendant. *Majors v. State*, 773 N.E.2d 231, 235 (Ind. 2002). A trial court's determination as to the existence of jury misconduct is reviewed for an abuse of discretion. *Id.* Only when the decision is clearly against the logic and effect of the facts and circumstances will we find an abuse of discretion. *Id.*

Harris argues that he had evidence—specifically Juror #11’s excluded testimony—that gross misconduct occurred and that it harmed him but that the trial “court abused its discretion by turning a blind eye and not allowing [Juror #11] to testify about being pressured and coerced by other jurors[.]” Appellant’s Br. at 10. The State argues that the trial court did not abuse its discretion because Juror #11’s testimony was inadmissible. We agree with the State.

A verdict may not be impeached by evidence from the jurors who returned it. *Williams v. State*, 793 N.E.2d 1019, 1025 (Ind. 2003), *reh’g denied*. Indeed, Indiana Evidence Rule 606(b) provides:

Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury’s deliberations or to the effect of anything upon that or any other juror’s mind or emotions as influencing the juror to assent to or dissent from the verdict or indictment or concerning the juror’s mental processes in connection therewith, except that a juror may testify (1) to drug or alcohol use by any juror, (2) on the question of whether extraneous prejudicial information was improperly brought to the jury’s attention or (3) whether any outside influence was improperly brought to bear upon any juror. A juror’s affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying may not be received for these purposes.

While Evidence Rule 606(b) contains three limited exceptions in which a former juror may testify as to the validity of a verdict, Harris does not claim, nor do we find, that one of the exceptions applies. Here, Harris sought to introduce testimony from Juror #11 that she was coerced and pressured by her fellow jurors to return a guilty verdict. Such testimony, however, is inadmissible. *See* Ind. Evid. Rule 606(b); *Johnson v. State*, 700 N.E.2d 480, 481 (Ind. Ct. App. 1998) (holding that a juror’s post-verdict affidavit stating

that other jurors coerced her to vote guilty could not be used to impeach the verdict). *See also Griffin v. State*, 754 N.E.2d 899, 903 (Ind. 2001) (“Intrajury influence is not sufficient to overturn a verdict.”), *aff’d on reh’g*, 763 N.E.2d 450 (Ind. 2002). Thus, the trial court did not abuse its discretion by rejecting Harris’s claim of juror misconduct and by denying his motion for a new trial.

CONCLUSION

For the foregoing reasons, we affirm the trial court’s denial of Harris’s motion for a new trial.

Affirmed.

KIRSCH, C.J., and BAILEY, J., concur.